

# Labor News & Views

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## FIRING FRITZ

One of the criticisms we often hear from supervisors and managers is that the disciplinary system for civilian employees sucks. "You can't fire civilian employees," "It takes forever," and "It's too much trouble" are oft quoted phrases.

The disciplinary system is a managerial tool. Just as with any other tool, it works effectively and efficiently when used for the purpose and in the manner for which it was designed. But by the same token, just like the welding torch, if it's misused, the operator can get burned.

What do I mean by misused? Let me give you a typical scenario. Bob, the manager, walks into my office and says, "Tammy, I want to fire Fritz." I say, "O.K., what did Fritz do?" Bob, "He was 30 minutes late this morning. This is the fifteenth time he's been late in the last six months, and I'm not going to put up with it any more. I want him gone!" I say, "What did you do the other fourteen times he was late?" (Long silence ensues).

I say, "Uh huh. I see. Well, I wouldn't recommend you fire him, but it's certainly time to be taking some action to correct this problem." Bob, "See, I told you the system wouldn't work."

The Department of Navy disciplinary system is designed to be corrective in nature, not punitive. Early  
(See "Firing Fritz, Page 2)



## QUIZ TIME

Fred, your employee, is a Widget Mechanic WG-10. His normal workweek is Monday through Friday from 0700 to 1530 with a 1/2 hour unpaid lunch break. He travels frequently to other Naval facilities repairing widgets. And because of the rapidly changing widget technology, he often travels to exotic locations for training.

In which of the following situations is Fred entitled to be paid for his travel time?

1. On Monday, he picks up tools and the company truck at 0630 in order to begin work at the Bremerton Branch of Bobbit Boatbuilding at 0700. He works there until 1530 and then returns the truck and tools, finishing at 1600.

2. On Tuesday, he leaves home at 0600 and reports directly to the Bremerton Branch, Bobbit Boatbuilding facility at 0700, works until 1530 and returns directly home, arriving there at 1630.

3. On Wednesday, Fred catches a flight to San Diego at 0930 arriving there at 1630. On Thursday (10 hours), Friday (10 Hours) and Saturday (4 hours), Fred attends a Navy training course presented by LCDR Larry LaRue, a Navy SEAL Team Leader, on the maintenance requirements for Widget ML-347-89, a new high tech weapon issued to the SEALs. On Saturday, he leaves San Diego at 1400, arriving at his home at 1930 hours.

4. On Sunday, Fred leaves home at 0430 to catch a 0630 flight which gets him to Tawney Tennessee at 1830. For the next 12 weeks, Fred attends the Tawney Tennessee Technical Institute taking their general course, Widget Wizardry, listed in their catalog as course # WS-401. He completes his final exam at 1600 on Friday and catches an 1830 flight home arriving there Saturday morning at 0300.

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5. On Tuesday, Fred leaves home at 0430 and drives to the Portland Pewter Place factory in Portland, OR, arriving there at 0830, works there until 1500 and drives home arriving at 1900.

(See "Overtime" on page 4)

### FIRING FRITZ

(CONTINUED FROM PAGE 1)

intervention and progressive steps to correct Fritz's behavior should have been taken. Bob instead, as we are so oft prone to do, chose to avoid the confrontation with Fritz, until his frustration with Fritz's behavior reached the breaking point. And then he wanted to jump right to capital punishment.

What should Bob have done? The minute he noticed the pattern developing, he should have brought Fritz into his office and counseled him, perhaps issuing a letter of requirement. The next time it occurred, he should have taken more severe action, i.e. issued a reprimand. And the next time, more severe action, i.e. suspension without pay. If Fritz still doesn't get the message, and subsequently gets fired, Bob can then demonstrate he attempted to correct the behavior with progressive discipline, but Fritz was obviously unwilling or incapable of rehabilitation.

All of this is not to suggest that capital punishment (i.e. firing) is always out of line for a first offense by an employee. There are a number of offenses for which such action can be supported. However, employee tardiness is not generally one of those offenses.

Could this problem have been corrected without resorting to discipline? Maybe. It depends on the reason(s) for Fritz's tardiness. Maybe something as simple as adjusting his working hours to allow him to start 15 minutes later would have taken care of the problem. But that's something Bob would never have been able to determine until he made the initial confrontation with Fritz. Had Bob intervened early, and properly used the disciplinary tools available to him, the problem probably would have been resolved long before the day he walked into my office.

We're here to help you with these matters. Don't wait until "you're ready for blood" to get us involved. It's too hard on your (and our) blood pressure. Believe it or not, used properly the system really does work.



**Welcome to another  
year of our water cooler  
chats!**

### KNOW YOUR COLLECTIVE BARGAINING AGREEMENT

Oh for a penny for the number of time a supervisor has come, wanting assistance with a problem employee and they haven't a clue as to what's been negotiated into the collective bargaining agreement to assist them with the very problem identified. I think I buy a small Tropical Island and retire!

Let me give you an example. A supervisor comes to his friendly HR Advisor, complaining that by the time an employee (prone to use sick leave as fast as it accrued) called to tell him she was too sick to work that day, it was too late in the day to find a relief employee for the remainder of the shift. And as a result, the supervisor was falling behind in her work, because she spent too much time performing the absent employee's work.

I said to Jim (not his real name, of course) when does the employee call? He said, "Vicki (not her real name either) starts work at 7:00, but if she calls in sick, she never calls before 9:00. When I've asked her to call before that, she always says the rules allow her to call in two hours after the shift starts." I said, "Do the rules allow her to call in two hours after her shift starts?" Jim said, "I guess so."

I asked Jim, "What does the negotiated agreement say about this." He looks at me like I've got three eyes and says, "I don't know." "Do you have a copy of the agreement?" He replied, "I used to, but I have no idea where it is."

So, Jim and I sat down and read the agreement together. Guess what it said in the Sick Leave article? It read, "Notification of incapacitation for duty shall be made to the supervisor prior to the start of the shift." Thrilled at this news, Jim then asks for assistance in preparing a reprimand for "Failure to Follow Instructions" because Vicki hadn't called in until 9:00 that morning.

What do you suspect would happen if the reprimand had been issued and Vicki subsequently filed a grievance? My guess is the reprimand would be rescinded. Jim wanted to know why. So I said to Jim, "What's the rule?" He responded, "You just read it. She has to call in before the shift starts." I said, "Have you been enforcing that rule?" He responded, "No." I said, "Then that's not the rule." Jim, with a puzzled look on his face said, "Huh?"

Do you know why? This is what I told Jim: If you discipline an employee for Failure to Follow Instructions, and the employee subsequently appeals, you'll bear the burden of proving to the third party that

the employee was aware of, or should reasonably have been aware of, the instruction allegedly violated. By not enforcing the policy in the past, Jim had effectively negated the policy. He had in essence, created a different policy of allowing the employee to call in up to two hours after the beginning of the shift. And he was now having difficulty living with it.

Now how to get out of the hole Jim had dug for himself. He and I prepared a written notice for the Vicki, advising her that in the future the policy requiring notification prior to the beginning of the shift would be enforced and that if she failed to abide by that policy in the future, disciplinary action would result.

As a supervisor, one of your basic responsibilities is enforcement of your activity's policies. The provisions contained in the collective bargaining agreements are part of your activity's policies and are just as (and in some cases more so) binding on you than as any other policy in your command.

If you haven't got a copy of the collective bargaining agreement that covers the employees working for you, I'd suggest you get one. It's difficult to enforce your activity's policies if you don't know what they are. Believe me, there are some employees who would be happy to make up the rules as they go, if you allow them to do so. By not enforcing policy, you do exactly that.

*Word of Caution: The notification for leave procedures in your collective bargaining agreement may be different than those in Jane's. Some agreements provide some grace period after the start of the shift for an employee to make notification. Be sure you know what's in yours. If you have questions, you should consult with your HR Advisor. - ED*

**Got Ideas?** You can contact us at [nwlabor\\_nw@nw.hroc.navy.mil](mailto:nwlabor_nw@nw.hroc.navy.mil). We would enjoy hearing your ideas for our newsletter.



## THE ATTACK OF THE GROCERY CANS

Dealing with workplace threats is never a simple matter. Sometimes it's better to learn from other people's experience rather than live the experience yourself.

In our September-October 2000 issue (Volume 1, Issue 4) we talked about the decision of the U.S. Court of Appeals for the Federal Circuit in *Metz v. Department of the Treasury*. If you remember, that decision directed the Merit Systems Protection Board

(the Board) to consider five factors in deciding whether an employee threatened supervisors or coworkers. Those factors are:

1. The listener's reaction.
2. The listener's apprehension of harm.
3. The speaker's intent.
4. Any conditional nature of the statements.
5. The attendant circumstances.

So, here's the situation<sup>1</sup>. A mailhandler was removed for "improper conduct" and "failure to follow instructions." This mailhandler told a coworker that "when he found out who was responsible for trying to suspend him, if he saw that person in the supermarket he would throw a can so hard as to take the person's head off" and "he had been a drill sergeant, had been on a rifle range before, and knew how to use a weapon."

What do you think? Is it enough to sustain a removal? Nope. It was enough to suspend him for 60 days, but not enough to remove him. Why?

It can be challenging to prove a "threat" charge. In this case, the agency (the Postal Service in this case -- big surprise, right?) decided to take a different road and charged him with "improper conduct."<sup>2</sup> However, in issuing the final decision on the removal, the deciding official (the manager who decided to remove the employee) stated that the mailhandler "made improper, if not threatening, remarks concerning one of (his) supervisors."

In deciding this case, the Board took a look at management's obligation to maintain a safe and productive workplace. Even though the Board has sustained removal in the past for cases more severe than flying grocery cans, they looked at the facts and circumstances of this particular case. What didn't bode well for management was two factors: One was that this was a one-time statement, made to a single coworker who testified that he wasn't concerned by it. The other was the absurdity of throwing grocery cans and that the statement involved some sort of future action conditioned on the employee meeting the supervisor at a particular location. (Personally, the canned food section in Safeway will never look the same!)

<sup>1</sup> Kerry L. Vernon v. U.S. Postal Service, 101 FMSR 5067

<sup>2</sup> Other possible charges in cases such as these are "using insolent language toward a supervisor," "using disrespectful language toward a supervisor," "using inappropriate language," or "using intimidating language toward fellow employees or supervisor." Just remember, whatever adjective you chose to use, you'll have to prove it.

The morale of the story? Let's not forget that a 60-day suspension is a significant chunk of change. However, the agency over-disciplined in this case. This was a first offense, which can be a challenge in itself. There's a reason why we always refer you to your HR Advisor and that is so that you can get an informed opinion on the severity of the discipline you are imposing.

## MISSED PAST ISSUES?

Our past issues are now available on the Department of the Navy Human Resources' website. Go to [www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5](http://www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5) to look at all our past issues

## OVERTIME

To arrive at the appropriate answers to this quiz, one must first understand the question. In some of the examples, Fred travels off and attends training outside his normal working hours. However, the question that was asked was not in which situations he was entitled to overtime for his training hours. Instead it asked about his *travel* hours. The overtime regulations are different for training than they are for travel and accordingly the analysis is different for each.

Secondly, one must determine whether or not Fred was Fair Labor Standards Act (FLSA) exempt or non-exempt. As a non-supervisory Widget Mechanic, Fred is FLSA non-exempt, meaning he is entitled to the overtime provisions of the FLSA. Different regulations would apply, were he FLSA exempt.

5 CFR 551.422 is the applicable regulation to determine Fred's entitlement to receive pay for his time spent traveling. It provides the following:

(a) Time spent traveling shall be considered hours of work if:

- (1) An employee is required to travel during regular working hours;
- (2) An employee is required to drive a vehicle or perform other work while traveling;
- (3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; *or*
- (4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

Application of this regulation to the five scenarios yields the following results:

1. Fred is entitled to be paid for his travel time since it entailed driving the company truck and transporting tools.
2. If the Bobbit facility is located within the confines of Fred's official duty station, he is not entitled to be paid for his travel time. If it's outside, he is entitled to be paid for the difference between his normal home-to-work commute time, and the time spent commuting to the Bobbit facility.
3. Fred is entitled to be paid for his travel between 0930 and 1530 on Wednesday and between 1400 and 1530 on Friday.
4. Fred is entitled to be paid on Sunday for his travel between the hours of 0700 and 1530 on Sunday. He is not entitled to be paid for his travel on Friday and Saturday.
5. Fred is entitled to be paid for all his travel hours on Tuesday (minus his normal home-to-work commute time.)

*Overtime regulations are complex. Were Fred exempt, the answers would have been different. When you assign employees to work (be it normally assigned tasks or training) which requires employees to travel outside their normal working hours, you may be assuming an overtime liability for the activity. If you are unsure of that liability, check it out with your Travel/Payroll/Human Resources Office before making the assignment. Backpay claims can get expensive. -ED*

## OTHER HELPFUL RESOURCES

Past Issues of Labor News and Views  
[www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5](http://www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5)

Looking for your HRO?  
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General Human Resources information:  
[www.donhr.navy.mil/Employees/cpp.asp](http://www.donhr.navy.mil/Employees/cpp.asp)

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[www.donhr.navy.mil/Employees/training.asp](http://www.donhr.navy.mil/Employees/training.asp)

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